

ARIZONA DEPARTMENT OF WATER RESOURCES

Water Management Division

3550 North Central Avenue, Phoenix, Arizona 85012

Telephone 602 771-8586

Fax 602 771-8689



Janet Napolitano
Governor

Herbert R. Guenther
Director

November 12, 2008

VIA CERTIFIED MAIL

Addressees on the Attached List

RE: Decision of the Director to Grant City of Prescott's Application for Modification of Its Designation as Having an Assured Water Supply (No. 86-401501.0001)

Dear Sir/Madam:

On October 12, 2007, the City of Prescott ("Prescott") submitted an application to modify its designation of assured water supply. During the Public Notice period, the Department received multiple objections.

After considering the application, the objections, the response of Prescott, and further analysis by Department staff, the Department determined that the application satisfies all of the requirements for a designation of assured water supply. See A.R.S. § 45-576; A.A.C. R12-15-701, *et seq.* This letter is the Decision of the Director of the Department of Water Resources ("Department") to grant the application with certain adjustments as explained in this letter and shown in the enclosed Draft Decision and Order.

The Department's decision on the objections is explained below. Objections raised are numbered for ease of reference.

1. Objection: A.R.S. § 45-555(E) is an unconstitutional special or local law.

Numerous objectors claim that A.R.S. § 45-555(E) constitutes special legislation in violation of Article 4, part 2, Section 19(20) of the Arizona Constitution. Consequently, objectors claim that Prescott is not entitled to rely on water transported under Section 45-555(E) to support its application. This is not a proper ground for objection under A.R.S. § 45-578(B).

Facial challenges to the constitutionality of a statute may not be considered by an administrative agency; rather, such challenges must be decided by the judiciary. See *Bohn v. Waddell*, 164 Ariz. 74, 87, 790 P.2d 772, 785 (Tax Ct. 1990), *aff'd in part, rev'd in part*, 174 Ariz. 239, 848 P.2d 324 (App. 1992) ("An administrative body has no powers to determine whether a statute complies with the constitution"); *Manning v. Reilly*, 2 Ariz. App. 310, 312, 408 P.2d 414, 416 (App. 1965) ("Legal or constitutional questions concerning the validity of a zoning ordinance

require judicial determination and are beyond the scope of an administrative body's powers and authority"). Accordingly, the Department must assume the constitutionality of Section 45-555(E) for the purpose of analyzing Prescott's application.

2. Objection: A.R.S. § 45-555(E) is not an exception to the groundwater transportation limits in A.R.S. § 45-544(A).

An objector claims that A.R.S. § 45-555(E) does not constitute an "exception from the groundwater transportation limits adopted as part of the 1980 Groundwater Management Act." The objector states that Section 45-555(E) constitutes an exception only to the general prohibition against transporting groundwater into an Active Management Area ("AMA") set forth in Article 8.1 (A.R.S. § 45-551(B)).¹ The objector claims that, "[t]he proper authority for Prescott to transport water from the Big Chino Valley, within the appropriate limits of the exception, is A.R.S. § 45-544(A)."

The Department disagrees with the objector's analysis. A.R.S. § 45-544(A) generally prohibits groundwater from being transported away from a groundwater basin; however, there are several exceptions set forth therein, including "as otherwise provided in . . . article 8.1 of this chapter." Section 45-555(E) is within article 8.1 and specifically allows groundwater to be transported from the Big Chino Sub-basin of the Verde River groundwater basin into the Prescott AMA. Accordingly, Section 45-555(E) constitutes a specific exception to the general prohibition against transportation of groundwater away from a groundwater basin set forth in Section 45-544(A).

3. Objection: Water delivered to Prescott Valley or the State Land Department pursuant to intergovernmental agreements should not be included in Prescott's designation.

Several objectors assert that groundwater proposed to be transported by Prescott from the Big Chino sub-basin to the Prescott AMA and delivered to the Town of Prescott Valley (Prescott Valley) pursuant to an Intergovernmental Agreement ("IGA") may not be included as part of Prescott's designation.² The objectors present three arguments to support their position. First, they contend that A.R.S. § 45-555(E) provides an exception to the Groundwater Code's prohibition on groundwater transportation only for Prescott or the United States in cooperation with Prescott. They argue that Prescott Valley is not an intended beneficiary of the statute and therefore cannot use its provisions to circumvent the prohibition on transporting groundwater from outside an AMA into an AMA as set forth in A.R.S. § 45-551(B). Second, the objectors

¹ Article 8.1 governs withdrawals of groundwater for transportation to an AMA, and specifically states that "Unless specifically authorized by this chapter, groundwater that is withdrawn in a groundwater basin or sub-basin outside of an initial active management area may not be transported directly or indirectly to an initial active management area." A.R.S. § 45-551(B).

² Some objectors also refer to a draft agreement between Prescott Valley and the Arizona State Land Department (State Land), in which Prescott Valley agrees to provide or otherwise allocate a portion of its share of the groundwater transported to the Prescott AMA to State Land. The objectors argue that this groundwater should also be excluded from Prescott's designation. The Department's responses to the objectors' arguments regarding the groundwater to be delivered by Prescott to Prescott Valley also apply to their arguments regarding the groundwater Prescott Valley may have agreed to provide to State Land.



argue that deliveries of groundwater by Prescott to Prescott Valley are not sanctioned by A.R.S. § 45-555(E) because Prescott Valley does not meet the criteria in A.R.S. § 45-555(E)(1) or (2). Finally, as an alternative argument, the objectors contend that the groundwater cannot be included in Prescott's designation because it would result in double counting of this water for use by new subdivisions in both Prescott and Prescott Valley. The Department disagrees.

With respect to the objectors' first argument, the Department does not agree that groundwater transported by Prescott from the Big Chino sub-basin into the Prescott AMA pursuant to A.R.S. § 45-555(E) cannot be delivered to and used by entities in the AMA outside of Prescott's service area, including other cities and towns. A.R.S. § 45-555(E) places no restriction on who may use groundwater transported by Prescott from the Big Chino sub-basin pursuant to its provisions. Because the Legislature did not include language in A.R.S. § 45-555(E) restricting who may use groundwater transported by Prescott from the Big Chino sub-basin, it obviously did not intend to impose a restriction on who may use the groundwater. Compare A.R.S. §§ 45-552(A) and 45-554(B), which impose such restrictions on the use of groundwater transported to an initial AMA from the McMullen Valley groundwater basin and the Harquahala irrigation non-expansion area, respectively.

As for the objectors' second argument, the Department does not agree that Prescott Valley must satisfy the criteria in A.R.S. § 45-555(E)(1) or (2) in order for it to receive groundwater transported by Prescott pursuant to those statutory provisions. As long as Prescott satisfies the statutory criteria, Prescott may transport groundwater from the Big Chino sub-basin to the Prescott AMA and deliver it to other entities in the AMA, including Prescott Valley.

With respect to the objector's third argument, the Department does not agree that including this groundwater in Prescott's assured water supply designation will result in the double counting of the water for use by new subdivisions in both Prescott and Prescott Valley. When the groundwater Prescott proposes to transport pursuant to Section 45-555(E) is included in Prescott's designation, the Prescott Valley obligation will be included as both a supply and a demand. In addition, the designation includes a condition requiring Prescott to report the obligation to Prescott Valley separately from its own demand in the annual reports. As a result, the groundwater will not be available to support new subdivisions in Prescott's service area.

4. Objection: Transported groundwater will allow Prescott and other cities to continue "irresponsible growth."

Some objectors claim that Prescott (and other cities in the Prescott AMA) will use groundwater transported from the Big Chino sub-basin to the Prescott AMA to serve the demands of "irresponsible growth." This is not a proper ground for objection under A.R.S. § 45-578(B). Also, A.R.S. § 45-576 requires that all water serving Prescott's new growth, as well as its existing demands, will be consistent with achieving the management goal of safe-yield in the Prescott AMA.



5. Objection: Prescott's City Council has not committed to using transported groundwater to achieve the management goal of the Prescott AMA.

An objector asserts that Prescott's City Council is not taking action to use a portion of groundwater transported from the Big Chino sub-basin to the Prescott AMA to achieve safe yield within the Prescott AMA. Pledging a volume of the transported groundwater toward meeting the safe-yield management goal of the Prescott AMA is not a direct requirement for a designation of assured water supply. Therefore the objector's assertion is not a proper ground for objection under A.R.S. § 45-578(B).

However, the City of Prescott adopted Resolution No. 3688 on July 12, 2005, which provides that:

any additional water rights to which [Prescott] would be entitled *as a result of the retirement of historically irrigated acreage* in the Big Chino Ranch will not be used for development or growth, but will be reserved by the City and dedicated for mitigation and/or safe yield purposes within the Prescott Active Management Area to the extent needed for same.

Emphasis added. The right to transport groundwater from the Big Chino sub-basin to the Prescott AMA "as a result of the retirement of historically irrigated acreage" is authorized by A.R.S. § 45-555(A). Prescott's application acknowledges that Resolution No. 3688 does not allow such groundwater to be "used for development or growth," and accordingly it has not included that volume of water in its designation application. Only the transportation of groundwater pursuant to A.R.S. § 45-555(E) is included in Prescott's application.

6. Objection: Prescott has not proven financial capability.

Several objectors assert that it is unclear how the pipeline infrastructure for transportation of groundwater from the Big Chino sub-basin to the Prescott AMA will be financed, and therefore Prescott failed to demonstrate financial capability, as required by A.R.S. § 45-576(J)(3). The statute defines "assured water supply" to include a requirement that "[t]he financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works."

The Department has provided in rule that a city or town applying for a designation may demonstrate financial capability by any combination of several methods. These methods include the submittal of "a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner" with "a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan;" or "evidence that financing mechanisms are in place to construct adequate delivery, storage and treatment works in a timely manner." A.A.C. R12-15-720(C)(3)(b).



Prescott submitted evidence of its five-year capital improvement plan, providing for construction of the pipeline and associated infrastructure for transportation of groundwater from the Big Chino sub-basin to the Prescott AMA. Prescott also submitted a letter from its chief financial officer stating that finances will be available to construct the pipeline and infrastructure, and documentation that it has remaining debt capacity of approximately \$175 million for water infrastructure.

In addition to Prescott's evidence of financial capability, in order to ensure that the necessary infrastructure will be completed in a timely manner to make the water available to Prescott and its customers for 100 years, the inclusion of the groundwater transported from the Big Chino sub-basin to the Prescott AMA in the designation order is conditioned on submittal of an approval of construction by the Arizona Department of Environmental Quality on or before December 31, 2019. Such approval will occur after construction of the pipeline is completed.

7. Objection: Prescott should not be allowed to transport groundwater without taking into account the approved demands of other groundwater users in the area.

An objector claims that the Department may not interpret A.R.S. § 45-555(E) to allow Prescott to transport water from the Big Chino sub-basin without regard to whether the groundwater is physically available under the assured water supply statutes and rules, and without regard to other groundwater users' rights to a portion of that same water. Specifically, the objector reserved the right to object to any decision by the Director that would allow Prescott to transport an amount of groundwater that could affect an entity with a previously approved Analysis of Adequate Water Supply ("Analysis"), such as Chino Grande, LLC, in the same geographic area.

Prescott demonstrated physical availability by submitting a hydrologic study that took into account the full amount that was approved for Chino Grande's Analysis. The study shows that the aquifer contains sufficient groundwater supplies to meet the adequate water supply requirements for Chino Grande and the assured water supply requirements for Prescott.

8. Objection: Prescott cannot demonstrate a 100-year assured water supply because of other, unregulated demands on the Big Chino sub-basin, which is located outside an AMA.

Several objectors contend that an assured water supply applicant proposing to use groundwater from the Big Chino sub-basin has a heightened burden to show that the groundwater will be physically, continuously and legally available for 100 years, because the sub-basin is located outside an AMA, where there is no legal limit on the amount of groundwater that landowners may withdraw for beneficial use and where new subdivisions may be developed regardless of their impact on issued assured water supply determinations. The objectors contend that Prescott failed to meet this heightened burden and its application should therefore be denied. The Department disagrees.

Under the Department's assured water supply rules, an applicant for a designation of assured water supply that includes groundwater as a proposed source must demonstrate that the groundwater will be withdrawn from depths that do not exceed a maximum 100-year depth-to-static water level of 1,000 feet below land surface, after taking into account the projected



declines during the 100-year period caused by existing uses, other assured and adequate water supply determinations, and the applicant's proposed use. A.A.C. R12-15-716(B). Prescott made this demonstration with respect to the groundwater it proposes to withdraw from the Big Chino sub-basin. There is no requirement under statute or rule that Prescott meet an additional burden because the groundwater will be withdrawn in an area outside an AMA.

As with all designations, the Department will monitor Prescott's designation, including the groundwater supplies from the Big Chino sub-basin. If new groundwater uses in the area impact the groundwater supplies in Prescott's designation in a manner that results in Prescott no longer having a 100-year assured water supply, the Department may require Prescott to modify its designation or may take action to revoke Prescott's designation. See A.A.C. R12-15-711.

9. Objection: Prescott cannot demonstrate a 100-year assured water supply because the water proposed to be pumped by Prescott could someday be determined to be subflow.

Some objectors claim that the water Prescott proposes to transport from the Big Chino sub-basin to the Prescott AMA may be determined to be subflow by the court in the Gila River Adjudication. These objectors maintain that the water sought to be withdrawn by Prescott is the source of the headwaters of the Verde River and, as such, all or substantially all of that water is subflow, which is subject to the laws of prior appropriation and the jurisdiction of the court for the Gila River Adjudication. If the court in the Gila River Adjudication were to agree that this water is subflow, then these objectors further submit that Prescott's pumping would be subject to the rights of senior downstream water right holders. As a result, the water is not legally and continuously available to Prescott. For the reasons stated below, the Department disagrees.

The objectors admit that this argument depends on a future determination by the court in the Gila River Adjudication that the water proposed to be pumped by Prescott is subflow, and that no such determination has been made at this time. Under Arizona law, water withdrawn from a well is presumed to be groundwater, and the burden is on those claiming otherwise by clear and convincing evidence. See *Maricopa County Municipal Water Conservation District No. 1 v. Southwest Cotton Co.*, 39 Ariz. 65, 85, 4 P.2d 369, 376 (1931). The objectors have not provided any evidence to overcome the legal presumption that the water withdrawn from Prescott's proposed wells would be groundwater.

The water that Prescott plans to pump is derived from a basin-fill aquifer system that is mainly recharged along the mountain fronts and ephemeral stream channels of the upper Big Chino Valley. Subflow refers to subterranean waters in the sands and gravels in the alluvium underlying and closely associated with an intermittent or perennial stream. Prescott's proposed well field is adjacent to the Big Chino Wash, which is an ephemeral tributary to the Verde River, and it is located approximately 20 miles northwest of the initial perennial reach of the Verde River. The Department believes that the water proposed to be withdrawn by Prescott is not subflow of the Upper Verde River, but groundwater, which is not subject to the rights of senior water right holders on the Verde River downstream of the head waters. Also, baseflow significantly increases downstream of the headwater springs of the Verde River due to additional groundwater discharge and contributions from major tributaries that benefit holders of downstream senior water rights.



10. Objection: Prescott cannot demonstrate a 100-year assured water supply because proposed withdrawals from the Big Chino could have adverse impacts on the Verde River.

Several objectors further argue that Prescott's proposed withdrawals of water from the Big Chino sub-basin would have adverse impacts on the flows and biota of the Verde River. Due to these impacts, the objectors maintain that litigation will be initiated to enforce senior water rights and federal environmental laws, such as the Endangered Species Act, and Prescott's proposed pumping would therefore be subject to injunction. As a result, the water would no longer be continuously and legally available. For the reasons stated below, the Department disagrees.

As discussed above, the water Prescott proposes to pump is presumed to be groundwater under Arizona law, and the objectors have not established otherwise. The Department does not have authority under the assured water supply statutes and rules to consider potential impacts on the Verde River from Prescott's proposed pumping of groundwater as part of its review of Prescott's application for a modification of its assured water supply designation. Furthermore, the objectors acknowledge that litigation to enjoin Prescott's pumping has not been filed at this time. In addition, the objectors have not provided evidence of the timing or magnitude of potential impacts on the Verde River that could occur in the future from the interception of groundwater that flows through the Big Chino sub-basin toward the Verde River headwaters springs. Numeric groundwater models are not yet available to simulate specific well locations, layering, and complex geologic units that include faults and a playa that restricts groundwater flow within the Big Chino sub-basin. These models are necessary to predict when and to what extent there may be future impacts on the Verde River from pumping groundwater within the Big Chino sub-basin.

Many of the objectors also point to Executive Order No. 91-06, issued by Governor Rose Mofford, which requires state agencies to "rigorously enforce their existing authorities to assure riparian protection, maintenance, and restoration." This Executive Order directs agencies to use their existing authorities and is not self-executing. The Department's existing authorities regarding Prescott's application for a modification of its assured water supply designation are set forth in statute and rule, which do not authorize the Department to take into consideration riparian protection, maintenance, or restoration.

11. Objection: Prescott cannot demonstrate a 100-year assured water supply because of the potential effects of climate change on the Big Chino aquifer and possible effects of pumping on flora and fauna dependent on Verde River flows.

Some of the objectors contend that the Department must take into account the potential effects of climate change within the Upper Verde River watershed region on the availability of water in the Big Chino aquifer, together with the cumulative effects of Prescott's proposed pumping on the flora and fauna that is dependent on Verde River flows. The objectors further represent that Prescott does not have any mitigation or safeguards in place for decreasing its pumping when baseflows in the Upper Verde River are reduced due to decreases in precipitation and increases in water diversions, including evaporation and plant transpiration. As explained below, the Department disagrees.



The Department does not have authority under the assured water supply statutes and rules to consider potential impacts on the Big Chino sub-basin or the Verde River arising from potential changes in climate as part of its review of Prescott's application for a modification of its designation of assured water supply. Also, even though it is the general opinion of the scientific community that climate change is occurring, the current data and analyses are not yet sufficient to reasonably predict how potential changes in climate would quantitatively translate into potential changes in precipitation and natural recharge over a groundwater basin area, such as the Big Chino sub-basin, or into changes in the baseflow of the Verde River.

12. Objection: Prescott cannot demonstrate a 100-year assured water supply because specific language in the Yavapai Prescott Indian Tribe Water Rights Settlement Act protects the Verde River and riparian areas that depend on it.

Some of the objectors observe that the Yavapai Prescott Indian Tribe Water Rights Settlement Act ("YPIT Settlement Act") imposes certain restrictions on how funds obtained by Prescott from the sale of its Central Arizona Project ("CAP") allocation may be used in developing alternative water supplies, including the development of groundwater resources outside of the Prescott AMA. These objectors cite to Section 108 of the YPIT Settlement Act, which states that the development of alternative water sources "shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries."

The objectors have not presented any evidence indicating that Prescott's proposed transportation of groundwater violates Section 108 of the YPIT Settlement Act. Furthermore, the limitations in Section 108 of the YPIT Settlement Act are not part of the Department's review under state law of Prescott's application for a modification of its designation.

13. Objection: A.R.S. § 45-555(E) limits the quantity of groundwater that Prescott may transport to the Prescott AMA to an amount less than the amount Prescott claims.

The remaining issues raised by the objectors relate specifically to A.R.S. § 45-555(E). The statute provides an exception to Arizona Revised Statutes, Chapter 2, Article 8.1, including A.R.S. § 45-551(B) (prohibiting transportation of groundwater from a groundwater basin outside an AMA to an initial AMA under certain circumstances). Section 45-555(E) provides:

E. This article does not apply to the withdrawal and transportation of up to fourteen thousand acre-feet per year of groundwater by the city of Prescott, or the United States in cooperation with the city of Prescott, from the Big Chino sub-basin of the Verde River groundwater basin if the groundwater is withdrawn and transported either:

(1) In exchange for or replacement or substitution of supplies of water from the central Arizona project allocated to Indian tribes, cities, towns or private water companies in the Prescott active management area or in the Verde River groundwater basin.



(2) For the purpose of directly or indirectly facilitating the settlement of the water rights claims of the Yavapai-Prescott Indian tribe and the Camp Verde Yavapai-Apache Indian community.

Pursuant to A.R.S. § 45-555(E), Prescott claims the right to transport 9,570.7 acre-feet per year³ (AFY) into the Prescott AMA from the Big Chino sub-basin. Several objectors claim that the most Prescott can transport under the statute is 2,340.74 AFY. Set forth below are the claims of Prescott and the objectors, and the Department's determinations regarding the quantity of groundwater Prescott can transport under Section 45-555(E) for purposes of its designation.

Analysis Of Legal Entitlement Under A.R.S. § 45-555(E)(1)

Prescott's claims

Prescott claims the right to transport a total of 7,627 AFY under A.R.S. § 45-555(E)(1). This claim is based on Prescott's CAP allocation of 7,127 AFY and the Yavapai-Prescott Indian Tribe's ("Tribe's") CAP allocation of 500 AFY. Both allocations were sold to Scottsdale as part of the YPIT Settlement Act.

Prescott claims that it is entitled to transport groundwater from the Big Chino sub-basin in an amount equal to the CAP allocation that it sold to Scottsdale because it is entitled to fully replace the CAP allocation with groundwater from the Big Chino sub-basin. Prescott also claims that it is entitled to transport groundwater to replace the entire 500 AFY CAP allocation sold by the Tribe to Scottsdale as part of the YPIT Settlement Act based on the plain language of Section 45-555(E)(1) and the theory that Prescott lost the opportunity to lease or otherwise utilize the Tribe's CAP allocation water within the AMA when it was sold.

Objector's claims

The objectors claim that Prescott has already replaced all or a portion of the CAP allocation it sold to Scottsdale when it purchased Granite Creek surface water rights from the Chino Valley Irrigation District ("CVID") in 1998. The objectors note that the Granite Creek water was purchased in whole or in part with proceeds from the sale of Prescott's CAP allocation to Scottsdale. Under Section 107(a) of the YPIT Settlement Act, those proceeds were placed into the "Verde River Basin Water Fund," which expressly limited the use of those funds "for the purposes of defraying expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished" by Prescott. Pursuant to the Intergovernmental Agreement between Prescott and CVID dated March 27, 1998, and the subsequent "Director's Findings of Fact, Conclusions of Law, Decision and Order," issued by the Department on November 17, 1998, Prescott purchased from CVID the right to store a combined total of 10,580 AF in Watson Lake and Willow Lake, and a maximum diversion right of 4,826.26 AFY from Granite Creek (which includes 965 AFY for transportation losses) for municipal use.

³ Prescott claims this amount is subject to change based on the demand of the Tribe.



As a result of this purchase, the objectors first maintain that Prescott is not entitled to transport any water under Section 45-555(E)(1) because it already replaced all of its CAP subcontract with the maximum annual diversion right and storage rights Prescott purchased from CVID, which the objectors state together total 15,406.26 AFY. Alternatively, objectors claim that Prescott has replaced 4,826.26 AFY of its 7,127 AFY CAP allocation based on the 4,826.26 AFY maximum annual diversion right from Granite Creek, which reduces the amount available under Section 45-555(E)(1) to 2,340.74 AFY.⁴

Objectors also claim that Prescott is not entitled to transport water from the Big Chino sub-basin to replace the 500 AFY CAP allocation sold by the Tribe. Objectors maintain that Prescott has no right under the statute to replace the Tribe's CAP allocation with groundwater from the Big Chino sub-basin because the YPIT Settlement Act did not contemplate replacement of the Tribe's CAP allocation.

Department's Determination

Under A.R.S. § 45-555(E), Prescott has the right to transport groundwater to replace its 7,127 AFY CAP allocation to the extent that it has not already been replaced. Based on the YPIT Settlement Act, the Department believes that the volume of surface water rights Prescott purchased from CVID with monies from the Verde River Basin Water Fund replaced an equivalent volume of Prescott's CAP allocation and, therefore, must be subtracted from the 7,127 AFY that Prescott would otherwise be entitled to transport from the Big Chino sub-basin as replacement water.⁵ As explained below, the Department has determined that the amount of surface water rights purchased by Prescott with monies from the Verde River Basin Water Fund is 241.3 AFY, leaving 6,885.7 AFY of the CAP allocation that may still be replaced with Big Chino groundwater under Section 45-555(E)(1).

In the September 16, 2005, Decision and Order in *In the Matter of the Application of the City of Prescott for Modification of its Designation as Having an Assured Water Supply* ("2005 Prescott Designation"), the Department concluded that 1,391 AFY is physically, continuously and legally available to Prescott from Granite Creek. This number was based on the 2,034 AFY median flow of Granite Creek, less the Tribe's right to 643 AFY of that flow under Section 6.2 of the YPIT Settlement Agreement.⁶

Of the 1,391 AFY available to Prescott for designation purposes, only a portion of it was purchased with monies from the Verde River Basin Water Fund, and the remainder of the purchase was paid from other Prescott funds. As demonstrated in documents Prescott provided to the Department, the total purchase price of the CVID Granite Creek water rights was \$20,933,059.95. Of this total, \$3,632,920.83 (or 17.35 %) came from monies deposited into the

⁴ The objectors calculated the maximum amount available to be 2,340.74 AFY based on the erroneous assumption that the amount of Prescott's CAP allocation sold to Scottsdale was 7,167 AFY. The correct amount is 7,127 AFY, which would reduce 2,340.74 AFY by 40 AFY to 2,300.74 AFY.

⁵ Under A.A.C. R12-15-716, 717 and 718, the entirety of Prescott's CAP allocation would have been physically, continuously and legally available for Prescott's designation.

⁶ Yavapai-Prescott Indian Tribe Water Rights Settlement Agreement between the United States of America, the State of Arizona, the Tribe, Prescott and CVID, approved, confirmed and ratified by the YPIT Settlement Act.



Verde River Basin Water Fund from the sale of Prescott's CAP allocation to Scottsdale. This percentage applied to 1,391 AFY results in 241.3 AFY, which represents the volume of Prescott's CAP allocation that Prescott has already replaced with Granite Creek water. Reducing 7,127 AFY by 241.3 AFY leaves 6,885.7 AFY that Prescott is entitled to transport pursuant to Section 45-555(E)(1) for replacement of its CAP allocation.

With respect to the 500 AFY CAP allocation sold by the Tribe to Scottsdale, the Department does not agree with Prescott that it is entitled to transport groundwater to replace any of the allocation. Prescott argues that it is entitled to replace the Tribe's CAP allocation under the plain meaning of the statute. However, Section 45-555(E)(1) requires that the groundwater be "transported in exchange for or replacement or substitution of" the CAP supply of an entity listed in the section and there is no agreement between Prescott and the Tribe for Prescott to replace the Tribe's CAP allocation. Prescott also argues that it lost the opportunity to lease or otherwise utilize the Tribe's CAP allocation in the AMA. Whether Prescott actually could have leased the Tribe's allocation is speculative and Prescott has not provided evidence that this would have occurred.

Analysis Of Legal Entitlement Under A.R.S. § 45-555(E)(2)

Prescott's claims

Prescott claims that A.R.S. § 45-555(E)(2) authorizes it to transport groundwater from the Big Chino sub-basin in amounts that "directly or indirectly" facilitated the successful settlement of the Tribe's water rights claims as follows:

a. The amount that the Department subtracted from the median flow of Granite Creek due to the Tribe's right to Granite Creek flow under the YPIT Settlement Agreement, for purposes of the 2005 Prescott Designation (643 AFY).

b. The amount of potential assured water supply extinguishment credits lost due to Prescott's pledge of a Type 2 non-irrigation grandfathered groundwater right ("Type 2 Right") to guarantee Prescott's water service to the Tribe under the YPIT Settlement Agreement (950.7 AFY).

c. All potable demands for the YPIT Reservation, which Prescott agreed to deliver to the YPIT Reservation in perpetuity under the YPIT Settlement Agreement. This amount varies and is projected by Prescott to increase to 231 AF in 2027.

d. An additional 54.9% of water deliveries to the YPIT Reservation, which is effluent from the Tribe that Prescott agreed to treat and deliver to the Tribe for its use if requested by the Tribe (currently calculated by Prescott to be 124 AFY based on average potable deliveries of 226 AFY).



Objector's claims

Objectors dispute that Prescott is entitled to transport 643 AFY based on the Tribe's rights to Granite Creek flows under the YPIT Settlement Agreement because CVID owned the right at the time of the settlement, not Prescott. Therefore, the objectors claim that the contribution of Granite Creek water rights by CVID, not Prescott, facilitated the YPIT Settlement.

As for Prescott's delivery of potable water to the YPIT Reservation, objectors argue that at the time the YPIT Settlement Agreement was negotiated, Prescott had a pre-existing contractual obligation to deliver potable water to the YPIT Reservation under a Water Service Agreement with the Tribe dated November 20, 1980, and that the 1980 Water Service Agreement was not affected by the YPIT Settlement Agreement. Thus, objectors claim that the Water Service Agreement did not facilitate the settlement.

Department's Determination

The Department agrees with the objectors that the contribution of 643 AFY of Granite Creek water rights to the YPIT Settlement was made by CVID, not Prescott. Consequently, Prescott is not entitled to transport that amount under A.R.S. § 45-555(E)(2). However, as noted above, the Department took the Tribe's right to Granite Creek flow into consideration when calculating Prescott's entitlement to Big Chino sub-basin groundwater under Section 45-555(E)(1).

The Department agrees with Prescott that it is entitled to transport 950.7 AFY to replace potential assured water supply extinguishment credits lost due to the pledge of its Type 2 Right (3,169 AF total) to guarantee water service to the Tribe under the YPIT Settlement Agreement. Prescott's pledge of its Type 2 Right directly or indirectly facilitated the YPIT Settlement Agreement. The amount Prescott would have obtained for assured water supply purposes if it had extinguished its Type 2 Right in 1995 is calculated by utilizing the Department's extinguishment formula for Type 2 rights ($3,169 \text{ AF} \times 30 \text{ years} = 95,070 \text{ AF}$; $95,070 \text{ AF} / 100 \text{ years} = 950.7 \text{ AFY}$). See A.A.C. R12-15-726(B)(1). As a result, Prescott is entitled to transport 950.7 AFY for 100 years.

The Department further agrees with Prescott that it is entitled to transport the actual amount of water served to the Tribe each year pursuant to its Water Service Agreement. Prescott created a new contractual obligation in the YPIT Settlement Agreement by: (1) agreeing to serve the Tribe in perpetuity; and (2) agreeing that 550 AFY of the deliveries to the YPIT Reservation have a higher priority than the water deliveries to its own residents. Such an obligation directly or indirectly facilitated the settlement of the Tribe's water rights. This amount may fluctuate each year, depending on the amount that the Tribe orders. For purposes of Prescott's assured water supply designation, the amount included is 231 AFY, which is the amount Prescott projects as the Tribe's annual demand in 2027.

Finally, the Department agrees that Prescott is entitled to transport an amount of groundwater equal to the actual amount of effluent delivered to the Tribe under the YPIT Settlement Agreement. However, the Department does not agree with Prescott that it is currently entitled to have any groundwater transportation included in its designation on this basis. The effluent produced by the Tribe is being delivered to Prescott for treatment, and is currently being stored



underground by Prescott for long-term storage credits in Prescott's storage account. Prescott may not rely on Section 45-555(E)(2) to replace effluent until such time as Prescott actually begins delivering the YPIT effluent to the Tribe.

Total amount of groundwater to be transported pursuant to A.R.S. § 45-555(E) that is physically, continuously, and legally available to Prescott for designation purposes

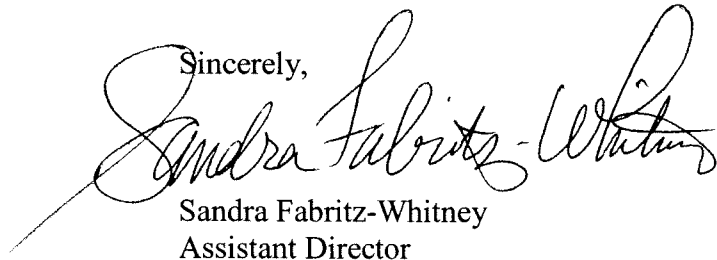
Based on the above, the Department has determined that Prescott is entitled to transport 8,067.4 AFY of groundwater from the Big Chino sub-basin to the Prescott AMA under A.R.S. § 45-555(E) for purposes of its designation of assured water supply. This quantity consists of 6,885.7 AFY under subsection (E)(1), and 1,181.7 AFY under subsection (E)(2).

Appealable Agency Action

This Decision of the Director to grant Prescott's Application to Modify Its Designation as Having an Assured Water Supply (No. 86-401501.0001), as shown in the enclosed Draft Decision and Order, is an appealable agency action. The Addressees on the attached list are entitled to appeal this decision. In order to appeal this action, a written appeal must be filed within **thirty (30) days** from receipt of this letter. Enclosed is a summary of the appeal process and an appeal form. Pursuant to A.R.S. § 41-1092.03(B), the grounds for filing a notice of appeal by an objector are "limited to issues raised in that party's comments."

Please direct any questions concerning the appeal process to Rebecca Szafranski, Deputy Counsel, at 602-771-8472.

Sincerely,



Sandra Fabritz-Whitney
Assistant Director

SFW/gsw

Enc. Decision and Order
Notice of Right to Appeal Agency Action
Notice of Appeal of Agency Action Form



LIST OF ADDRESSEES FOR DECISION LETTER DATED NOVEMBER 12, 2008
Re: Decision of the Director to Grant City of Prescott's Application for Modification of Its
Designation as Having an Assured Water Supply (No. 86-401501.0001)

Sent via Certified Mail:

Certified Mail Number:

Michael J. Pearce
Rita P. Maguire
Maguire & Pearce, PLLC
2999 N. 44th Street, Suite 630
Phoenix, AZ 85018
As Attorneys for the City of Prescott

70060810000460241267

John B. Weldon Jr.
Lisa M. McKnight
Salmon, Lewis & Weldon, P.L.C.
2850 E. Camelback Rd., Suite 200
Phoenix, AZ 85016
As Attorneys for Mr. Gary Beverly,
Mr. Tom Atkins and Dr. Anthony Krzysik

70060810000460240819

Paul L. Roberts
Roberts & Carver, PLLC
239 S. Cortez St.
Prescott, AZ 86303

70060810000460240826

Manfred Wenner
765 Sunrise Blvd.
Prescott, AZ 86301

70060810000460240840

Paul E. Smolenyak
5355 Ruth Mine Rd.
Prescott, AZ 86303

70060810000460240833

Chris Rigby
1510 Butterfield Rd.
Prescott, AZ 86303

70060810000460240857

Milton Paz
3814 N. Dale
Prescott Valley, AZ 86314

70060810000460241229

MaryAnn Paz
3814 N. Dale
Prescott Valley, AZ 86314

70060810000460241236

Sent via Certified Mail:

Certified Mail Number:

Nancy Owen Nelson
4911 Bear Way
Prescott, AZ 86301

70060810000460241021

Steve Morgan & Nichole Trushell
1885 N. Arrowhead Drive
Prescott, AZ 86305

70060810000460241243

Margaret Mendoza
1844 Farview Lane
Prescott, AZ 86305

70060810000460241014

Robert S. Lynch
Robert S. Lynch & Associates
340 E. Palm Lane, Suite 140
Phoenix, AZ 85004
As Attorneys for Merwyn C. Davis, Trustee
Under the Merwyn C. Davis Trust
Dated July 27, 1981

70060810000460241007

Mary C. Lin
594 Allerton Way
Chino Valley, AZ 86323

70060810000460240994

Thilo Kass
1844 Farview Lane
Prescott, AZ 86305

70060810000460240987

Pamela Hoover-Johnson
400 Serenity Court #B
Chino Valley, AZ 86323

70060810000460240963

Charles A. and Jo Ann Johnson
P.O. Box 852
Dewey, AZ 86327

70060810000460240895

Randy S. Hurley
4918 Bear Way
Prescott, AZ 86301

70060810000460240901

Leslie K. Hoy
1880 Coyote Road
Prescott, AZ 86303

70060810000460240918

List Of Addressees For Decision Letter Dated November 12, 2008

Sent via Certified Mail:

Certified Mail Number:

Maria Haxton
3814 N. Dale
Prescott Valley, AZ 86314

70060810000460240925

James Haxton
3814 N. Dale
Prescott Valley, AZ 86314

70060810000460240949

Jared Haxton
3814 N. Dale
Prescott Valley, AZ 86314

70060810000460240932

Santiago F. Galvis
332 N. Pleasant St.
Prescott, AZ 86301

70060810000460240864

Thomas L. Fleischner
1217 Hopi Drive
Prescott, AZ 86303

70060810000460240871

Edith A. Dillon
1217 Hopi Drive
Prescott, AZ 86303

70060810000460240888

Douglas Clendaniel
604 Dougherty Street
Prescott, AZ 86305

70060810000460240956

Audrey Clark
P.O. Box 12001
Prescott, AZ 86304

70060810000460241052

Frank Cardamone
825 Patrick Lane
Prescott, AZ 86303

70060810000460241069

Linda Butterworth
920 Monte Vista
Prescott, AZ 86303

70060810000460241076

Paul Burkhardt
1060 Apache Circle
Prescott, AZ 86303

70060810000460241083

List Of Addressees For Decision Letter Dated November 12, 2008

Sent via Certified Mail:

Certified Mail Number:

Doris Cellarius
621 Park Ave.
Prescott, AZ 86303

70060810000460241090

Roger Zeigler
4911 Bear Way
Prescott, AZ 86301

70060810000460241106

Cisco T. Ortega
207 Congress Ave.
Prescott, AZ 86303

70060810000460241113

Joanne Oellers
11201 E. Western Sunset Drive
Dewey, AZ 86327

70060810000460241120

Don Stephenson
1261 S. Sylvian
Prescott, AZ 86303

70060810000460241137

Helen Haxton
1261 S. Sylvian
Prescott, AZ 86303

70060810000460241144

Stephanie Grotbeck
1267 S. Sylvian
Prescott, AZ 86303

70060810000460241151

Creighton Grotbeck
1267 S. Sylvian
Prescott, AZ 86303

70060810000460241168

Kenneth Janeczek
2764 Boone Court
Prescott, AZ 86305

70060810000460240970

Ashley Fine
207 Congress Ave.
Prescott, AZ 86303

70060810000460241175

Jovita Fine
748 Copper Basin Rd.
Prescott, AZ 86303

70060810000460241182

List Of Addressees For Decision Letter Dated November 12, 2008

Sent via Certified Mail:

Certified Mail Number:

Harry M. Hollack
2256 Lichen Ridge Lane
Prescott, AZ 86303

70060810000460241199

Sandy Bahr, Chapter Director
Sierra Club- Grand Canyon Chapter
202 E. McDowell Rd, Suite 277
Phoenix, AZ 85004

70060810000460241205

Michelle Harrington
Rivers Conservation Manager
Center for Biological Diversity
P.O. Box 36265
Phoenix, AZ 85067

70060810000460241212

1 **DEPARTMENT OF WATER RESOURCES**
2 **BEFORE THE DIRECTOR**
3

4 **IN THE MATTER OF THE APPLICATION OF**) **AWS No. 2008-006**
5 **THE CITY OF PRESCOTT FOR A MODIFICATION**)
6 **OF ITS DESIGNATION AS HAVING AN ASSURED**) **DECISION AND**
7 **WATER SUPPLY**) **ORDER**
8) **No. 86-401501.0001**

9 **I. INTRODUCTION**

10 On October 12, 2007, the Arizona Department of Water Resources ("Department")
11 received an application from the City of Prescott ("Prescott"), requesting that the Department
12 modify Prescott's designation of assured water supply pursuant to A.R.S. § 45-576, *et seq.*, and
13 A.A.C. R12-15-701, *et seq.* On August 21 and August 28, 2008, the Department gave public
14 notice pursuant to A.R.S. § 45-578. Multiple objections were filed with the Department.

15 After receiving Prescott's request to modify its designation of assured water supply, the
16 Department reviewed relevant information regarding the application, including: 1) the
17 hydrologic information submitted by Prescott; 2) information regarding consistency with the
18 management goal of the Prescott Active Management Area ("AMA"); 3) information regarding
19 Prescott's financial capability to construct the necessary delivery system, treatment works and
20 storage facilities; and 4) the issues raised by the objections to the application. Based on that
21 information, the Department makes the following Findings of Fact, Conclusions of Law, and
22 Order of Designation and Conditions of Designation:

23 **II. FINDINGS OF FACT**

24 **A. General**

- 25 1. Prescott is a city incorporated in accordance with Article XIII of the Arizona
26 Constitution.
27 2. Prescott is located within the Prescott AMA.
28 3. Prescott currently serves water through its municipal distribution system to its customers.
29 4. Prescott has the legal authority to deliver water to its customers located within its service
30 area.

- 1 5. Prescott is currently designated as having an assured water supply pursuant to Decision
2 and Order AWS 2005-004, issued on September 16, 2005.

3 **B. Water Demands**

- 4 6. Prescott reported that its current demand as of calendar year 2007 is 8,327.1 acre-feet per
5 year ("current demand"). The current demand includes deliveries to the Yavapai-Prescott
6 Indian Tribe ("Tribe") in 2007.

- 7 7. Prescott's committed demand as of calendar year 2007 is 2,409.44 acre-feet per year
8 ("committed demand"). The committed demand includes the annual average of the
9 volume of water that Prescott is obligated to deliver to lands within the Chino Valley
10 Irrigation District ("CVID").

- 11 8. Prescott's projected demand in 2021 is 5,291.9 acre-feet per year ("2021 projected
12 demand"). The 2021 projected demand does not include the current demand or the
13 committed demand, or any volume of water that Prescott would be obligated to deliver to
14 the Town of Prescott Valley ("Prescott Valley") for use outside Prescott's service area.
15 The 2021 projected demand does include the demand at build-out of plats reasonably
16 projected to be approved through calendar year 2021.

- 17 9. Prescott's annual estimated water demand in 2021, which is the sum of its current
18 demand, committed demand and 2021 projected demand, is 16,028.44 acre-feet per year
19 ("2021 annual estimated water demand").

- 20 10. Prescott's projected demand in 2027 is 9,938.9 acre-feet per year ("2027 projected
21 demand"). The 2027 projected demand does not include the current demand or the
22 committed demand. The 2027 projected demand does include the demand at build-out of
23 plats reasonably projected to be approved through calendar year 2027, the volume of
24 water that Prescott is obligated to deliver to Prescott Valley for use outside Prescott's
25 service area, and the projected demand of the Tribe.

- 26 11. Prescott's annual estimated water demand in 2027, which is the sum of its current
27 demand, committed demand and 2027 projected demand, is 20,675.44 acre-feet per year
28 ("2027 annual estimated water demand").
29
30

C. Groundwater Withdrawn in the Prescott AMA: Physical, Continuous and Legal Availability, Consistency with the Management Goal, and Consistency with the Management Plan

12. Prescott has the right to withdraw groundwater within its service area in the Prescott AMA and deliver the groundwater to its customers pursuant to Service Area Right No. 56-003017.0000.
13. Prescott has demonstrated that after withdrawing 11,200 acre-feet per year of groundwater or stored water recovered outside the area of impact, from within its service area for 100 years, the depth-to-static water level within its service area is not expected to exceed 1,000 feet below land surface.
14. Prescott currently has wells within its service area of sufficient capacity to withdraw a total of 13,229.63 acre-feet per year of groundwater.
15. As of the date of the application, Prescott pledged 9,448.95 acre-feet of extinguishment credits, or an average of 94.49 acre-feet per year for 100 years.
16. Pursuant to A.A.C. R12-15-726(A), Prescott's groundwater allowance is 9,371.53 acre-feet per year for 100 years. The formula used to calculate this number is included in Attachment A, attached to this Decision and Order.
17. Pursuant to A.A.C. R12-15-722(A), Prescott may withdraw 9,466.02 acre-feet of groundwater over the next 100 years, consistent with the achievement of the management goal of the Prescott AMA.
18. For purposes of increasing the groundwater allowance in Finding of Fact 16, a total of 3,527 lots ("remaining lots") were included on preliminary plats approved by Prescott on or before August 21, 1998, but final plats associated with those preliminary plats have not yet been approved by Prescott and recorded, or have not yet been reviewed by the Department. The remaining lots are listed, by subdivision, in Attachment B attached to this Decision and Order.
19. Prescott is currently regulated as a large municipal provider under the Municipal Conservation Program in the Third Management Plan for the Prescott AMA ("Management Plan"). As of the date of this order, Prescott has not been found to be out of compliance with the Management Plan.

D. Recharge and Recovery

20. Prescott holds an Underground Storage Facility Permit (Permit No. 71-519567.0000) and a Water Storage Permit (Permit No. 73-528737.0000), which allow storage of a maximum volume of 6,721 acre-feet per year of effluent and surface water.
21. Prescott holds Recovery Well Permit No. 74-569302.0000, which allows recovery of 6,700 acre-feet per year outside the area of impact of storage.
22. Prescott holds Recovery Well Permit No. 74-561500.0000, which allows recovery of 1,613 acre-feet per year within the area of impact of storage.
23. Prescott has a pending application for a recovery well permit for Well No. 55-212087, which is located within the area of impact of storage. Prescott is seeking a permit to recover up to 1,694 acre-feet per year.

E. Surface Water: Physical, Continuous and Legal Availability

24. Prescott has demonstrated the physical availability of 1,391 acre-feet per year of surface water for a minimum of one hundred years for underground storage and recovery within the area of impact.
25. The surface water is legally available to Prescott pursuant to Statement of Claimant Nos. 36-40234 and 36-102689, Certificates of Water Right Nos. 593, 594 and 1674, and the Director's Findings of Fact, Conclusions of Law, Decision and Order No. ST 98-001, dated November 17, 1998, as supplemented by the Director's Supplemental Findings of Fact, Conclusions of Law, Decision and Order No. ST 98-001, dated March 28, 2008.
26. Prescott has provided a drought response plan and a back-up supply of groundwater pursuant to A.A.C. R12-15-717(C).

F. Effluent: Physical, Continuous and Legal Availability

27. Prescott holds 16,281.66 acre-feet of existing long-term storage credits for stored effluent, averaging approximately 162.82 acre-feet per year over a 100-year period.
28. Prescott's wastewater treatment plants currently have the capacity to treat 9,353.19 acre-feet per year of effluent for non-potable uses or for storage and recovery.
29. Based on an evaluation of the current, metered production of effluent, Prescott is projected to produce 5,141.24 acre-feet per year of effluent in 2021.

- 1 30. Based on an evaluation of the current, metered production of effluent, Prescott is
2 projected to produce 5,408.82 acre-feet per year of effluent in 2027.
- 3 31. Prescott will treat and directly deliver 1,796 acre-feet per year of effluent for non-potable
4 use.
- 5 32. Prescott is obligated to transfer an average of 204.44 acre-feet per year, over one hundred
6 years, of effluent long-term storage credits to CVID.
- 7 33. Prescott will store and recover outside the area of impact of storage up to 1,733.98 acre-
8 feet per year of effluent for potable use.
- 9 34. In 2021, Prescott will store and recover within the area of impact of storage up to
10 1,569.64 acre-feet per year of effluent for potable use.
- 11 35. In 2027, Prescott will store and recover within the area of impact of storage up to
12 1,837.22 acre-feet per year of effluent for potable use.

13 **G. Groundwater Transported From the Big Chino Sub-basin: Physical, Continuous and**
14 **Legal Availability**

- 15 36. Pursuant to A.R.S. § 45-555(E), Prescott has the right to withdraw groundwater from the
16 Big Chino sub-basin and transport it to the Prescott AMA.
- 17 37. Based in part on Prescott's projection that it will deliver 231 acre-feet to the Tribe in
18 2027, for purposes of this Decision and Order, the Department determines that in 2027,
19 Prescott will be authorized to withdraw up to 8,067.4 acre-feet per year of groundwater
20 from the Big Chino sub-basin and transport it to the Prescott AMA pursuant to A.R.S. §
21 45-555(E) ("transportation water"). The calculations for this volume are shown in
22 Attachment C to this Decision and Order.
- 23 38. This Decision and Order does not limit Prescott's right to transport more than 8,067.4
24 acre-feet per year of groundwater from the Big Chino sub-basin to the Prescott AMA
25 pursuant to A.R.S. § 45-555(E) in a year in which Prescott serves more than 231 acre-feet
26 to the Tribe. The volume that Prescott is authorized to transport in a particular year could
27 be more or less than 8,067.4 acre-feet per year, depending on the volume of water that
28 Prescott actually delivers to the Tribe in that year.
- 29
30

- 1 39. Prescott's application states that after subtracting the amount of water delivered to the
2 Tribe each year, 45.9 % of the remaining transportation water must be available for
3 delivery to Prescott Valley pursuant to an agreement between those parties.
- 4 40. Based on Prescott's projection of deliveries to the Tribe in 2027 in the amount of 231
5 acre-feet, the maximum annual volume of transportation water that Prescott will be
6 obligated to deliver to Prescott Valley is 3,597 acre-feet per year. This volume is included
7 in Prescott's 2027 projected demand. Inclusion of this volume does not fulfill any
8 requirement to obtain a certificate of assured water supply or a commitment to provide
9 water service from a designated provider for a new subdivision located in Prescott
10 Valley.
- 11 41. Prescott has demonstrated that after withdrawing 17,768 acre-feet per year of
12 groundwater for 100 years from wells located on the Big Chino Ranch in the Big Chino
13 sub-basin, the depth-to-static water level at the well sites is not expected to exceed 1,000
14 feet below land surface.
- 15 42. Prescott's Capital Improvement Plan includes funding for construction of wells in the Big
16 Chino sub-basin of sufficient capacity to withdraw more than 8,067.4 acre-feet per year
17 of groundwater.
- 18 43. The transportation water will be considered continuously available to Prescott when a
19 pipeline to transport the groundwater to Prescott's service area has been constructed and
20 the Arizona Department of Environmental Quality ("ADEQ") has issued an Approval of
21 Construction pursuant to A.A.C. R18-5-507 ("AOC") for the pipeline.
- 22 44. Prescott has demonstrated that 8,067.4 acre-feet per year of transportation water will be
23 physically, continuously and legally available when ADEQ issues an AOC.

H. Water Quality

- 25 45. Prescott will be regulated by ADEQ as a public water system, pursuant to A.R.S. §§ 49-
26 351, *et seq.*

I. Financial Capability

- 28 46. Prescott has constructed the delivery system and storage facilities necessary to satisfy its
29 annual estimated water demand for calendar year 2021.

- 1 47. Prescott has included in its Capital Improvement Plan for fiscal years 2010 through 2014
2 \$142.6 million for construction of the pipeline and other infrastructure to withdraw
3 groundwater from the Big Chino sub-basin and transport it to the Prescott AMA.
4 Prescott's chief financial officer has certified that finances will be available to implement
5 that portion of the Plan.
- 6 48. The water system bond capacity spreadsheet provided by RBC Capital Markets to Mr.
7 Mark Woodfill, Budget Finance Director for Prescott, indicates the City has remaining
8 debt capacity for the water enterprise system of approximately \$175 million. This
9 estimated capacity is based on standard assumptions with respect to interest rates, loan
10 term and credit requirements.

11 III. CONCLUSIONS OF LAW

12 Having reviewed the Findings of Fact, the Department makes the following Conclusions
13 of Law:

- 14 1. Prescott has demonstrated that without the transportation water, 9,466.02 acre-feet per
15 year of groundwater from the Prescott AMA, 1,391 acre-feet per year of surface water to
16 be stored and recovered within the area of impact, 1,733.98 acre-feet per year of effluent
17 to be stored and recovered outside the area of impact, 1,569.64 acre-feet per year of
18 effluent to be stored and recovered within the area of impact, 1,796 acre-feet per year of
19 effluent to be treated and directly delivered for non-potable use, and 204.44 acre-feet per
20 year of long-term storage credits to be transferred to CVID will be physically available,
21 continuously available and legally available for at least 100 years and will be consistent
22 with the management goal of the Prescott AMA. See A.A.C. R12-15-716; R12-15-717;
23 R12-15-718; R12-15-722. This volume, 16,161.08 acre-feet per year, is sufficient to
24 meet the 2021 annual estimated water demand of 16,028.44 acre-feet per year. See
25 Attachment D to this Decision and Order.
- 26 2. Prescott has demonstrated that with the transportation water, 9,466.02 acre-feet per year
27 of groundwater from the Prescott AMA, 1,391 acre-feet per year of surface water to be
28 stored and recovered within the area of impact, 1,733.98 acre-feet per year of effluent to
29 be stored and recovered outside the area of impact, 1,837.22 acre-feet per year of effluent
30 to be stored and recovered within the area of impact, 1,796 acre-feet per year of effluent

1 to be treated and directly delivered for non-potable use, 204.44 acre-feet per year of long-
2 term storage credits to be transferred to CVID, and 8,067.4 acre-feet per year of
3 groundwater to be withdrawn from the Big Chino sub-basin and transported to the
4 Prescott AMA will be physically available, continuously available and legally available
5 for at least 100 years and will be consistent with the management goal of the Prescott
6 AMA. See A.A.C. R12-15-716; R12-15-717; R12-15-718; R12-15-722. This volume,
7 24,496.06 acre-feet per year, is sufficient to meet the 2027 annual estimated water
8 demand of 20,675.44 acre-feet per year. See Attachment D to this Decision and Order

9 3. For purposes of A.A.C. R12-15-716(B)(3)(c)(ii), Prescott's annual estimated water
10 demand that will be met with groundwater from the Prescott AMA is 11,200 acre-feet per
11 year and Prescott's annual estimated water demand that will be met with groundwater
12 from the Big Chino sub-basin is 8,067.4 acre-feet per year.

13 4. In accordance with A.A.C. R12-15-721, Prescott meets the standard established for
14 determining consistency with the Management Plan for the Prescott AMA.

15 5. The water supply served by Prescott will be of adequate quality, pursuant to A.A.C. R12-
16 15-719.

17 6. Prescott has satisfied the financial capability criteria in A.A.C. R12-15-720.

18 7. Prescott has satisfied all requirements for a designation of assured water supply.

19 8. The groundwater allowance set forth in Finding of Fact No. 16 of this Decision and Order
20 may increase following the recording of a final plat for each of the subdivisions listed in
21 Attachment B to this Decision and Order, subject to Condition 8 of this Decision and
22 Order. The groundwater allowance will increase in accordance with Formula 1 in
23 Attachment E to this Decision and Order. However, an increase in groundwater
24 allowance does not affect the volume or term of this designation.

25 9. The groundwater allowance set forth in Finding of Fact No. 16 of this Decision and Order
26 may increase if any residential groundwater use and associated non-residential use in
27 existence on August 21, 1998, is replaced by permanent groundwater service by Prescott.
28 The groundwater allowance will increase in accordance with Formula 2 in Attachment E
29 to this Decision and Order. However, an increase in groundwater allowance does not
30 affect the volume or term of this designation.

IV. ORDER OF DESIGNATION AND CONDITIONS OF DESIGNATION

Having reviewed the Findings of Fact and Conclusions of Law, the Director hereby issues this Decision and Order designating Prescott as having an assured water supply, subject to the following conditions:

1. The Director reserves the right under A.A.C. R12-15-711(C) to periodically review and modify the designation as conditions warrant.
2. Pursuant to A.A.C. R-12-15-711(F), the Director may revoke this designation if the findings of fact or the conclusions of law upon which the designation is based change or are invalid, or if an assured water supply no longer exists.
3. The Director's determination that an assured water supply exists for Prescott is based on its review of the water supplies pledged by Prescott.
4. If Prescott does not submit to the Department on or before December 31, 2019, evidence that ADEQ has issued an AOC for the pipeline, Prescott shall submit an application to modify this decision and order designating Prescott as having an assured water supply when the sum of Prescott's current demand, committed demand and two-year projected demand exceeds 16,028.44 acre-feet per year, or by December 31, 2019, whichever is earlier.
5. If Prescott submits to the Department on or before December 31, 2019, evidence that ADEQ has issued an AOC for the pipeline, Prescott shall submit an application to modify this decision and order designating Prescott as having an assured water supply when the sum of Prescott's current demand, committed demand and two-year projected demand exceeds 20,675.44 acre-feet per year, or by December 31, 2025, whichever is earlier.
6. Pursuant to A.A.C. R12-15-719, Prescott shall satisfy any state water quality requirements established for its proposed use after the date of this designation.
7. Prescott shall annually provide to the Department the following information in the manner prescribed in A.A.C. R12-15-711(A):
 - a. An estimate of the demand of platted, undeveloped lots located in Prescott's service area.
 - b. An estimate of the demand at build-out of customers with which Prescott has entered into a notice of intent to serve agreement in the previous calendar year.

- c. A report regarding Prescott's compliance with water quality requirements.
 - d. The depth-to-static water level of all wells from which Prescott withdrew water during the previous calendar year.
 - e. Any other information requested by the Director to determine whether Prescott is continuing to meet all the requirements necessary to maintain this designation of assured water supply.
 - f. If Prescott submits to the Department on or before December 31, 2019, evidence that ADEQ has issued an AOC for the pipeline, Prescott shall also include the volume of transportation water actually delivered to Prescott Valley in the previous year.
 - g. If Prescott submits to the Department on or before December 31, 2019, evidence that ADEQ has issued an AOC for the pipeline, Prescott shall also include in its committed demand 3,597 acre-feet per year, less any volume of transportation water actually delivered to Prescott Valley in the previous year.
8. To increase the groundwater allowance in accordance with Conclusion of Law No. 8 of this Decision and Order, the following shall apply:
- a. Prescott shall submit the following information to the Department for each subdivision listed in Attachment B for which a final plat has been approved by Prescott:
 - i. A request to increase the groundwater allowance and reference to the subdivision listed in Attachment B for which the request is made.
 - ii. A copy of the preliminary plat approved for the subdivision. The preliminary plat must have been approved prior to August 21, 1998.
 - iii. A copy of the approved, recorded final plat of the subdivision.
 - iv. A copy of the standard report of the Prescott Community Development Department to the Prescott City Council on the subdivision explaining any changes between the preliminary plat and the final plat, explaining why the plat is in substantial conformance with the preliminary plat and finding that the original plat was feasible to develop.
 - v. A calculation of the difference in projected water use, including groundwater use, between the preliminary plat and the final, recorded plat.

1 The information used in making the calculation shall also be submitted,
2 including, but not limited to, the landscaping plans for the open areas of
3 the subdivision, a copy of any proposed deed restrictions or covenants
4 relating to water use at the subdivision and a projection of the nature and
5 type of any commercial properties included in the subdivision.

6 b. The Director shall increase Prescott's groundwater allowance in accordance with
7 Formula 1 on Attachment E if the Director finds that all of the following apply:

8 i. Prescott has found that the final plat for the subdivision is in substantial
9 conformance with the preliminary plat approved by Prescott on or before
10 August 21, 1998.

11 ii. The total projected water use, including groundwater use, for the
12 subdivision, based on the final plat, is equal to or less than the projected
13 water use based on the approved preliminary plat.

14 iii. The total number of residential lots of the final plat is equal to or less than
15 the total number of residential lots of the approved preliminary plat, or if
16 the plat is part of a "master planned community," as defined by A.R.S. §
17 32-2101, the total number of residential lots of the final plats within the
18 master planned community is equal to or less than the total number of
19 residential lots of the approved preliminary plats within the master
20 planned community.

21 c. Condition 8(b)(i) of this Decision and Order shall be evaluated in accordance with
22 the current policy of the City of Prescott as expressed in Resolution No. 3213,
23 adopted November 23, 1999. If at any time, the City of Prescott alters the policy
24 expressed in Resolution No. 3213 through amendment, repeal, or adoption of any
25 other policy, ordinance, regulation or enactment, the Department may modify or
26 revoke this Decision and Order.

27 d. Within 180 days of receiving the request and information specified in Condition
28 8(a) of this Decision and Order, the Director shall notify Prescott whether the
29 criteria of Condition 8(b) of this Decision and Order have been met, whether the
30 groundwater allowance will be increased and the volume of the increase. If the

request is approved, the Director shall add the volume to Prescott's groundwater allowance. However, an increase in the groundwater allowance does not affect the volume or term of this designation.

9. To increase the groundwater allowance in accordance with Conclusion of Law No. 9 of this Decision and Order, Prescott shall submit evidence of the number of housing units receiving the replacement water service, evidence that the housing units were receiving water service from a source other than Prescott as of August 21, 1998, and evidence of the permanent replacement groundwater service by Prescott after August 21, 1998. At such time as the Director determines that the requirements of Conclusion of Law No. 9 have been met, the Director shall add the volume to Prescott's groundwater allowance. However, an increase in the groundwater allowance does not affect the volume or term of this designation.

IT IS HEREBY ORDERED THAT THE CITY OF PRESCOTT BE DESIGNATED AS HAVING AN ASSURED WATER SUPPLY UNTIL DECEMBER 31, 2021.

IF THE CITY OF PRESCOTT SUBMITS TO THE DEPARTMENT EVIDENCE OF AN APPROVAL OF CONSTRUCTION FROM THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR A PIPELINE TO TRANSPORT GROUNDWATER FROM THE BIG CHINO SUB-BASIN TO THE PRESCOTT AMA ON OR BEFORE DECEMBER 31, 2019, THE CITY OF PRESCOTT SHALL BE DESIGNATED AS HAVING AN ASSURED WATER SUPPLY UNTIL DECEMBER 31, 2027.

DATED this ____ day of _____, 200__

Herbert R. Guenther
Director

A copy of the foregoing
Decision and Order mailed

1 by certified mail this ____ day
2 of _____, 200_, to:

3 Steve Norwood, City Manager
4 City of Prescott
5 P.O. Box 2059
6 Prescott, AZ 86302

Certified Mail No. _____

7 A copy of the foregoing
8 **Decision and Order** mailed
9 by first class mail this ____ day
10 of _____, 200_, to:

11 Rita P. Maguire
12 Michael J. Pearce
13 Maguire & Pearce, P.L.L.C.
14 2999 N. 44th St., Suite 630
15 Phoenix, AZ 85018

16 Sam Wercinski
17 Arizona's Real Estate Commissioner
18 Arizona Department of Real Estate
19 2910 N. 44th St., Suite 100
20 Phoenix, AZ 85018

21 Mr. Cliff Neal
22 Central Arizona Groundwater Replenishment District
23 P.O. Box 43020
24 Phoenix, AZ 85080

25 Ms. Gerry Wildeman, Area Director
26 Prescott Active Management Area Office
27 2200 East Hillsdale Road
28 Prescott, Arizona 86301-4941

29 By: _____
30

Attachment A: Calculation of Groundwater Allowance

R12-15-726(A). Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:

1. [Not selected by Prescott]
2. If the application is for a designation of assured water supply:
 - a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
 - i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area:

1997 Annual Report shows 6,534.7 withdrawn minus deliveries outside the service area of 26.0 AF yielding a value of 6,508.7. Rounded to 6,509.

$$6,509 * 100 = 650,900$$

ii.-v.

This portion of the calculation was replaced with the calculation in (A)(3). See below (shaded).

3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):

- a. To compute this amount of groundwater, the Director shall:
 - i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of groundwater, calculated by multiplying 150 gallons per capita per day by 365 days; and

2.15 persons per dwelling unit (PPDU) based on 2005 D&O
 $2.15 * 150 * 365 = 117,712.5$ gals per dwelling unit (DU)

- ii. Multiply the product in subsection (A)(3)(a)(i) by the number of residential lots described in subsection (A)(4), and then multiply that product by 100.

- b. The Director shall not include the amount computed in subsection (A)(3)(a) within the amount of groundwater that the applicant may use under subsection (A)(2)(a) until a final plat for the lots has been recorded.

$$117,713 * 7,924 / 325,851 * 100 = 286,253$$

- vi. If any residential groundwater uses, including residential groundwater uses served by any exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;

Per discussions with Prescott and per application, this volume is 0 AF.

- vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999 and ending December 31 of the calendar year before the date of the application;

Year	Groundwater Withdrawn (AF)
1999	6704
2000	6642
2001	6808
2002	8214
2003	7009
2004	7236
2005	6337
2006	7979
Total	56,929

- viii.

This portion of the calculation was replaced with the calculation in (A)(5). See below (shaded).

5. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), if the applicant makes the request described in subsection (A)(3), the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(viii) with an amount of groundwater calculated as follows. The Director shall:

- a. Determine the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application and multiply that number of years by the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott active management area for use within the applicant's service area in any calendar year from

1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;

Number of Calendar years = 8
1997 Annual Report Amount = 6,509
 $6,509 \times 8 = 52,072$ AF

b. Determine the average dwelling occupancy within the applicant's service area and multiply that average dwelling occupancy by an amount of groundwater calculated by multiplying 150 gallons per capita per day by 365 days;

2.15 PPDU based on 2005 D&O
 $2.15 \times 150 \times 365 = 117,712.5$ gals per DU

c. For each year in the period beginning with 1999 and ending with the calendar year before the date of application, determine the number of the residential lots that meet the criteria in subsection (A)(4) and were served water by the applicant as of July 1 of the relevant year and add the number of these residential lots determined for each year;

This number is cumulative.

1999	$345 \times 8 = 2,760$	2003	$589 \times 4 = 2,356$
2000	$438 \times 7 = 3,066$	2004	$536 \times 3 = 1,608$
2001	$430 \times 6 = 2,580$	2005	$491 \times 2 = 982$
2002	$580 \times 5 = 2,900$	2006	$404 \times 1 = 404$
		TOTAL	16,656

d. Multiply the volume of groundwater calculated in subsection (A)(5)(b) by the number of residential lots in subsection (A)(5)(c); and

With corrected lot number is
 $16,656 \text{ du} \times 117,713 \text{ gals/DU} = 325,851$
 $= 6,017$ AF

e. Add the volumes of groundwater from subsections (A)(5)(a) and (A)(5)(d).

$52,072 + 6,017 = 58,089$ AF

- ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero, and;

$$\begin{array}{r} 56,929 - 58,089 = -1,160 \\ = 0 \end{array}$$

- x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).

$$650,900 + 286,253 + 0 - 0 = \underline{\underline{937,153}}$$

The final groundwater allowance = **937,153 acre-feet** or **9,371.53 acre-feet per year for 100 years.**

Attachment B: Subdivisions Eligible to Receive the Groundwater Allowance

Subdivision Name	Number of Lots on Preliminary Plat	Number of Lots on Final Plats Submitted to ADWR	Remaining Lots
Cliff Rose, Unit 3	21	0	21
Dells at Prescott Lakes	167	101	66
Lakeside@ Prescott Lakes	240	35	205
Mason Ridge	14	0	14
Peaks Unit I @ Prescott Lakes	665	0	665
Peaks Unit II @ Prescott Lakes	150	124	26
Prescott Lakes: Estates Unit 2	239	163	76
Prescott Lakes: Estates Unit 3	12	0	12
Prescott Lakes: Pines	231	216	15
Prescott Lakes: Pinnacle Unit 1	62	0	62
Prescott Lakes: Pinnacle Unit 2	340	0	340
Summit Unit 2	227	133	94
The Club at Forest Trails	49	0	49
Yavapai Hills	1,632	239	1,393
Yavapai Hills in Prescott Valley	489	0	489
Total	4,538	1,011	3,527

Attachment C: Calculations Pursuant to A.R.S. § 45-555(E)

1. Replacement of Prescott's CAP Allocation—A.R.S. § 45-555(E)(1) (6,885.7 acre-feet per year)

If Prescott had retained its 7,127 AFY CAP allocation that it sold to Scottsdale in 1995, the entire amount would have been physically, legally and continuously available for its designation of assured water supply. A.A.C. R12-15-716, 717 and 718. A.R.S. § 45-555(E)(1) authorizes Prescott to transport an amount of groundwater from the Big Chino sub-basin to replace its CAP allocation, to the extent Prescott has not already replaced the CAP allocation. In 1998, Prescott replaced a portion of the CAP allocation by purchasing water rights from the Chino Valley Irrigation District ("CVID"). However, only 17.35% of the water rights were purchased with the proceeds of the sale of Prescott's CAP allocation. In 2005, the Department determined that 1,391 acre-feet per year of the water rights purchased from CVID are physically, continuously and legally available for its designation of assured water supply. Therefore, the Department has determined that 17.35% of 1,391 acre-feet per year is the volume of CAP water that Prescott has already replaced. The volume of groundwater that Prescott is authorized to transport from the Big Chino sub-basin to the Prescott AMA to replace its CAP allocation is calculated as follows:

$$\begin{aligned} &7,127 \text{ acre-feet per year} - (1,391 \text{ acre-feet per year} \times 17.35\% = 241.3) \\ &= \mathbf{6,885.7 \text{ acre-feet per year}} \end{aligned}$$

2. Loss of Potential Extinguishment Credits Due to Pledge of Type 2 Non-Irrigation Grandfathered Groundwater Right ("Type 2 Right") to Facilitate Settlement—A.R.S. § 45-555(E)(2) (950.7 acre-feet per year)

By pledging its 3,169 AFY Type 2 Right to guarantee water service to the Yavapai-Prescott Indian Tribe ("Tribe") in facilitation of the Yavapai-Prescott Indian Tribe Settlement ("YPIT Settlement"), Prescott lost potential assured water supply extinguishment credits it otherwise could have earned by extinguishing the right in 1995. The volume of extinguishment credits is determined pursuant to the formula provided in A.A.C. R12-15-726(B)(1). The volume of groundwater that Prescott is authorized to transport from the Big Chino sub-basin to the Prescott AMA under A.R.S. § 45-555(E))(2) due to the pledging of its Type 2 Right is calculated as follows:

$$\begin{aligned} &3,169 \text{ acre-feet per year} \times 30 \text{ years} = 95,070 \text{ acre-feet for 100 years, or} \\ &\mathbf{950.7 \text{ acre-feet per year for 100 years}} \end{aligned}$$

3. Water Deliveries to the Tribe to Facilitate Settlement—A.R.S. § 45-555(E)(2) (231 acre-feet per year)

By extending water service to the Tribe in perpetuity and giving priority to the Tribe in its Water Service Agreement with the Tribe as part of the YPIT Settlement, Prescott directly or indirectly facilitated the YPIT Settlement and therefore is authorized to transport from the Big Chino sub-

basin an amount equal to the amount of water it serves to the Tribe each year pursuant to A.R.S. § 45-555(E)(2). Prescott projects that the Tribe's water demand in 2027 will be **231 acre-feet**.

4. Total

The total volume of groundwater that Prescott is authorized to withdraw from the Big Chino sub-basin and transport to the Prescott AMA pursuant to A.R.S. § 45-555(E) for purposes of this Decision and Order:

$$\begin{aligned} &6,885.70 \text{ acre-feet per year} + 950.70 \text{ acre-feet per year} + 231 \text{ acre-feet per year} \\ &= \mathbf{8,067.40 \text{ acre-feet per year}} \end{aligned}$$

Attachment D
CITY OF PRESCOTT MODIFICATION OF DESIGNATION APPLICATION
WATER SOURCES AND SUPPLY

Source	AF/year	Treatment Options	Recharge Options	Legal Authority	Comments
Big Chino Groundwater*	8,067.4 af/yr*	Well Head Treatment Well capacity: 17,768 AF/YR (Future wells, as included in Capital Improvement Plan)		A.R.S §-45-555(E)*	17,768 AF/YR Physically Demonstrated; limited by legal availability
Groundwater Allowance	9,371.53 af/yr	Well Head Treatment Permitted well volume: 13,229.63 af/yr		Service Area Right	
Groundwater Extinguishment Credits	94.49 af/yr				
Total AMA Groundwater	9,466.02 af/yr				
Existing LTSC	162.82 af/yr	Well Head Treatment	(See Effluent Recovery below) Presumed to transfer to CVID	USF # 71-519567	(See Effluent Recovery Below) Presumed to transfer to CVID
Effluent Direct Deliveries	1,796 af/yr	Sun Dog WWTP Capacity = 6,888.88 af/yr			
Effluent Storage & Recovery	41.62 acre-feet per year accrued as long-term storage credits and transferred to CVID	Airport WTF Capacity = 2,464.31 af/yr Total Treatment Capacity = 9,353.19 af/yr Available Effluent (based on 2021 Potable Demands, minus YPIT, CV, and Prop 400) = 10,702 * 0.4804 (Effluent production factor) = 5,141.24 af/yr	Water Storage Permitted Volume: 6,721 af/yr Current Recovery Well Capacity: 8,313 af/yr Pending Capacity: 1,694 af/yr Recovery within area of impact of storage (AOI), with pending: 3,307af/yr Recovery outside AOI: 6,700 af/yr	USF# 71-519567	Recovery outside the area of impact of storage limited to 1,733.98 acre-feet per year, due to overall physical availability.
	1,733.98 af/yr recovered outside area of impact of storage				

Attachment D
CITY OF PRESCOTT MODIFICATION OF DESIGNATION APPLICATION
WATER SOURCES AND SUPPLY

	<p>2021: 1,569.64 af/yr recovered within area of impact</p> <p>2027: 1,837.22 af/yr recovered within area of impact*</p>	Available Effluent (based on 2027 Potable Demands, minus YPIT, CV, and Prop 400) = 11,259 * 0.4804 (Effluent production factor) = 5,408.82 af/yr			
Surface Water delivered through Annual Storage and Recovery within the area of impact	1,391.00 af/yr	Well Head Treatment	(See recovery options on previous page)	<p>SOC: 36-40234, 36-102689</p> <p>CWR: 593,594,1674</p> <p>D&O ST 98-001</p> <p>USF# 71-519567</p>	From 2005 Decision and Order
Total Supplies in 2021:	16,161.08 af/yr				
Total Supplies in 2027:*	24,496.06 af/yr*				

*See Conditions 4 and 5 of the Decision and Order.

Attachment E

Formula 1:

The groundwater allowance will increase following the recording of a final plat for each of the subdivisions listed in Attachment B, so long as the conditions of this Decision and Order are met. The groundwater allowance will increase in accordance with the following formula:

The number of lots in the subdivision x 2.15 (average dwelling occupancy) x 150 gallons per capita per day x 365 days x 100

Divide product by 325,851 gallons/acre-foot to convert to acre-feet.

Formula 2:

The groundwater allowance will increase if Prescott replaces any residential groundwater use, including any non-residential use associated with the residential use, in existence on August 21, 1998, with permanent groundwater service by Prescott. The groundwater allowance will increase in accordance with the following formula:

0.5 acre-foot x the number of housing units receiving replacement water service x 100